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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,031	11/07/2001	Lonzell Graham	03549.0066-01	4761
22852	7590	05/03/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			COLE, ELIZABETH M	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/986,031

Applicant(s)

GRAHAM ET AL.

Examiner

Elizabeth M. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/5/03 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 26-31, 34, 36-37, 40-41, 48, 50, 52-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiefer et al, U.S. Patent No. 4,938,888 in view of Brown, U.S. Patent No. 4,953,250, substantially as set forth in paragraph 2 of the prior office action. With regard to the limitation that the process consists essentially of the steps set forth, Kiefer discloses applying the detergent formulation in a single step. The consisting essentially of language precludes steps which would affect the basic and novel characteristics of the invention. The burden is on applicant to define what is meant by the basic and novel characteristics of the invention. "For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." See, e.g., PPG, 156 F.3d at 1355, 48 USPQ2d at 1355 ("PPG could have defined the scope of the phrase consisting essentially of" for purposes of its patent by making clear in its specification what it regarded as constituting a material change in the basic and novel characteristics of the invention."). MPEP 2111.03 Also, If an applicant contends that additional steps or materials in the prior art are

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excluded by the recitation of “consisting essentially of,” applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant’s invention. In *re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964). In this case, Kiefer states that the detergent composition is applied in a single step. The fact that the process encompasses an additional step of first applying a fabric softener has not been shown by Applicant to materially change the characteristics of applicant’s invention, nor has Applicant pointed out where the basic and novel characteristic of the invention is defined in the specification. Further, Kiefer teaches that the fabric softener is not part of the detergent composition but is applied first so that it can be deposited onto the clothing before the detergent composition is released. If a fabric softener was not desired in a particular application, it would have been obvious to have omitted the fabric softener deposition step, since the omission of a step with the concomitant loss of the function of that step has been held to be obvious. Finally, it is noted that the fabric softener addition step is not included in example 2, and is not included in independent claim 1. Therefore, the additional step of adding the fabric softener coating first is an optional step and therefore, the Kiefer reference meets the new limitation of “consisting essentially of”.

4. Claims 32-33, 35-38, 42, 44-46, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiefer et al in view of Brown as applied to claims 26-31, 34, 36-37, 40-41, 48, 50, 52-53 above, and further in view of Flesher, U.S. Patent No. 4,170,565 substantially for the reasons set forth in paragraph 3 of the previous office action.

5. Claims 47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiefer et al in view of Brown and Flesher as applied to claims 32-33, 35-38, 42, 44-46, and 51 above

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and further in view of Hagner et al, U.S. Patent No. 4,113,630 substantially for the reasons set forth in paragraph 4 of the previous action.

6. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiefer et al in view of Brown and Flesher as applied to claims 32-33, 35-38, 42, 44-46 and 51 above and further in view of Moschner, U.S. Patent No. 5,196,139 substantially as set forth in paragraph 5 of the previous action.

7. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiefer et al in view of Brown and Flesher as applied to claims 32-33, 35-38, 42, 44-46 and 51 above and further in view of Hani et al, U.S. Patent No. 5,298,249 substantially as set forth in paragraph 6 of the previous action.

8. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiefer in view of Brown as applied to claims 26-31, 34, 36-37, 40-41, 48, 50, 52-53 above, and further in view of Rodriguez, U.S. Patent No. 4,199,465 substantially as set forth in paragraph 7 of the previous action.

9. Applicant's arguments filed 6/5/03 have been fully considered but they are not persuasive. Applicant's arguments regarding the Kiefer reference are addressed above in paragraph 3. With regard to Brown, Applicant argues that Brown does not cure the deficiencies of Kiefer with regard to the single step coating process. However, as set forth above, Kiefer does teach single step coating and therefore Brown is not needed to remedy a non-existent deficiency.

10. With regard to the combination of Kiefer and Brown with Flesher, Applicant argues that the examiner cannot pick and choose an isolated teaching from a reference while ignoring other teachings. While this is certainly true, the Examiner is entitled to combine references as long as

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a motivation to make the combination is clearly set forth. Also, it is not necessary that every reference have every feature claimed unless the rejection has been indicating as anticipating the claim. In this case, no anticipation rejections have been made. Thus, it is not necessary that the Flesher reference teach using a needle punched fabric or a dry hand. The fact that every reference does not teach every claimed element is not the same as ignoring teachings and picking and choosing isolated teachings. The deficiency in the combination of Kiefer and Brown, the teaching of Flesher and the motivation to make the combination are all set forth in the statement of the rejection. It appears that Applicant's argument regarding the combination is that it has not been shown that the inclusion of the additional elements taught by Flesher would not change the dry hand property taught by Kiefer. However, since Kiefer teaches that the dry hand is achieved by employing the particular detergent composition disclosed in Kiefer, it is reasonable to presume that one of ordinary skill in the art would be able to incorporate other known additives such as those set forth in Flesher without materially changing the primary properties of the Kiefer detergent composition, especially by selecting the amounts and components added so as to maintain the dry hand of the substrate which is primary concern in Kiefer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

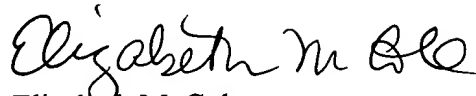
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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (703) 872-9306.

A handwritten signature in black ink, appearing to read "Elizabeth M. Cole". The signature is fluid and cursive, with the first name being the most prominent.

Elizabeth M. Cole
Primary Examiner
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e.m.c

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